

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Suits – Arbitration – An amount of Rs. 11,10,90,000/- as full and final settlement of the Arbitral awards dated 15-1-2005 & 15-04-2006 in respect of the work relating to “Earth Work Excavation and construction of structures for Micro Net work Distributory System of SRBC., awarded to M/s. B.V. Subba Reddy Constructions – Sanctioned – Orders – Issued.

IRRIGATION & CAD (ARBITRATION) DEPARTMENT

G.O.. Ms. No. 3

Dt: 18 -01-2011

Read the following:

1. Arbitral Awards dated 15-01-2005 & 15-04-2006.
2. From the Hon’ble IIIrd Additional District Judge Court, Kurnool at Nandyal, Judgments and Decrees dated 10-04-2008 in O.P. Nos. 1,2,3 of 2005 and O.P. No. 1 of 2007.
3. From the Hon’ble High Court of A.P., Hyd., Order dated 23-12-2008 in CMA MP No.2893/2008 in CMA No. 1580/2008 & CMA MP No. 2898/2008 in CMA No. 1585/2008 and CMA MP No. 2891/2008 in CMA No. 1579/2008.
4. From M/s. B.V. Subba Reddy Constructions represented by its Managing Partner representation dated 14-02-2009.
5. Govt. Memo Nos.1336, 1500, 1501, 2763, I & CAD (ARB) Dept., dated: 25-02-2009 & 19-3-2009.
6. From the E-N-C, Medium Irrigation, Hyd. Lr. No. ENC/Med/DCEIII/OT1/ARB-17, 18, 19 & 20/2009, dated: 28-07-2009.
7. From the Hon’ble High Court of A.P., Hyd., Order dated: 02-07-2010.
8. From the Hon’ble Supreme Court of India, Order dt: 26-07-2010 in SLP (Civil) CCNos. 10747, 10765, 10766, 10813 of 2010.
9. From M/s. B.V. Subba Reddy Constructions represented by its Managing Partner representation dated 29-07-2010.
10. From the C.E. (P) Irrigation, Kurnool Lr. No. CE(P)/Knl/DEE.3 /AEE1/SRBC/(ARB)/248 & 269 Govt. dated: 09-08-2010 & 03-09-2010.
11. From M/s. B.V. Subba Reddy Constructions represented by its Managing Partner representation dated: 15-11-2010.
12. From the C.E. (P) Irrigation, Kurnool Lr. No. CE(P)/Knl/DEE.2 /AE/SRBC/(ARB)/374/ Govt. dated: 06-12-2010.

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ORDER:

Four Agreements i.e. (1) Agreement No. 3 NCB 2002-2003 dated 19-02-2003 relating to package XXXII consisting of blocks I & II of SRBC, (2) Agreement No. 4 NCB 2002-2003 dated 19-02-2003 relating to package XXXV consisting of blocks VIII and IX of SRBC, (3) Agreement No. 5 NCB 2002-03 dated: 19-02-2003 relating to package XXXVI consisting of Block X of SRBC, and (4) Agreement No. 4 NCB 2003-04 dated 24-4-2003 relating to package XXXIV consisting of blocks VI & VII of SRBC, were executed between M/s. B.V. Subba Reddy, Constructions and the State of A.P.

The agreements consisted of excavation of water courses and field channels, and construction of structures such as drops, division boxes, turn outs & Model Sections, and CD & MD works. The work had to be completed within a period of one year from the date of agreement i.e., by 18-02-2004. However, the works were not completed in the stipulated time by the contractor, and certain disputes in this regard arose between the contractor and the department. The said disputes were referred to the panel of Arbitrators. The panel of Arbitrators, in respect of blocks I & II of SRBC, in their Award

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Dated:15-01-2005, directed the respondent to pay a total sum of Rs. 2,58,73,373/- (Rs. 2,39,13,010/- being the awarded amount, Rs. 18,70,363/- being the pendente lite interest, and Rs. 90,000/- being the cost of arbitration share to be paid by the respondent to the claimant). In respect of blocks VIII of IX of SRBC, the panel of Arbitrators directed the respondent to pay a total sum of Rs. 1,98,13,599/- (Rs.2,80,54,728/- being the awarded amount, Rs. 16,83,871/- being the pendente lite interest, and Rs. 70,000/- being the cost of arbitration share to be paid by the respondent to the claimant). In respect of Block-X of SRBC, they directed the respondent to pay a total sum of Rs. 1,34,47,709/- (Rs. 1,22,45,884/- being the awarded amount, Rs.11,34,325/- being the pendente lite interest, and Rs.67,500/- being the cost of arbitration share to be paid by the respondent to the claimant). In respect of blocks VI & VII of SRBC the Arbitrators, in their award dated 15-04-2006, directed the respondent to pay a total sum of Rs. 2,47,59,173/- (Rs.2,16,09,262/- being the awarded amount, Rs. 30,74,911/- being the pendente lite interest, and Rs. 75,000/- being the cost of arbitration share to be paid by the respondent to the claimant).

2. The Chief Engineer (P) Kurnool has also reported that aggrieved by the above awards, Government filed appeals in A.O.P. Nos. 1/05, 2/05, 3/05 & 1/07 before the IIIrd Addl. District Judge Court, Kurnool at Nandyal. The same were dismissed vide orders dated 10-04-2008. The awards were made Rule of Court, and decrees were issued accordingly. Aggrieved by these orders, Government filed CMA Nos. 1579/2008, 1580/2008, 1581/2008 & 1585/2008 before the Hon'ble High Court of A.P. Hyderabad, and the Hon'ble High Court in its order dated 23-12-2008 granted a stay subject to the condition of the petitioners / appellants depositing 50% of the decretal amount along with the suit cost, if any, within a period of 10 weeks from the date of order, i.e., 23-12-2008. On such deposit, the respondent were put at liberty to withdraw 50% of the amount so deposited along with the suit cost, if any, without furnishing any security, and the remaining 50% by furnishing security to the satisfaction of the lower court. It was also suggested by Hon'ble High Court that both the parties attempt conciliation/mediation to settle the dispute in accordance with the newly accepted trend in the adjudicatory process in light of Section 89 of C.P.C., as early as possible, preferably within a period of four months from 23-12-2008. The Contractor meanwhile filed Execution Petitions for realization of decretal amounts. On receipt of the Warrants from the Lower Court at Nandyal, the C.E. (P) Kurnool sent proposals to Government for sanction an amount of Rs. 11,14,75,631/- warranted by the III Additional District Court for disposal of the E.P. filed by the Contractor in the above (4) O.Ps .

3. Government, after careful examination of the matter, preferred to file SLPs in the matter against the above interim orders of Hon'ble High Court dated 23-12-2008, in CC No.10766/2010, CC No. 10747/2010, CC No. 10813/2010, with a view that the work done by the claimant was meager when compared to the amount which was directed to be deposited by Hon'ble High Court. However, the same were dismissed by Hon'ble Supreme Court of India in its order dated 26-7-2010, on the grounds of delay as well as on merit.

4. M/s. B.V. Subba Reddy Constructions have also filed Contempt Case Nos. 289/2010, 290/2010 & 291/2010 for non-implementation of the above High Court Order dated: 23-12-2008 in CMA MP. No.2893/2008 in CMA No.1581/2008, CMA MP. No.2892/2008 in CMA No.1580/2008 & CMA MP. No.2898 in CMA No.1585/2008 respectively, the Hon'ble High Court in its orders dated 02-07-2010 has observed that:

"It is obvious that the order passed by this court dt: 23.12.2008 is subject to discretion of the respondent whether to comply with or not and that if the order of the court is not complied with, there will not be

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any eviction order. It is also brought to the notice of the court subsequent to the passing of the said order, an execution petition has already been filed.

In view of the matter, it should be understood that there is no stay granted in this matter by this court. Therefore, the petitioner can proceed with the execution proceedings for want of non-compliance of the orders of the court."

Accordingly, the High Court has closed the Contempt Case.

5. Meanwhile, several rounds of conciliation efforts were made between the claimant and Government as a part of alternative dispute redressal mechanism. During these conciliation efforts, M/s. B.V. Subba Reddy Constructions, vide letter dated 15-11-2010, have agreed for limiting their claims to an amount of Rs. 9,66,00,000/- plus the interest thereupon till the date of payment as full and final settlement of the Arbitral awards in respect of the works relating to "Earth Work Excavation and Construction of Structures for Micro Network Distributory System of SRBC", as agreed by them during the negotiations held on 12.05.2009. Subsequently, during the conciliation efforts made at the level of Government on 11.01.2011, the representatives of M/s. B.V. Subba Reddy Constructions reiterated the above offer.

6. Government after careful examination of the matter, hereby accord sanction for an amount of Rs. 11,10,90,000/- (Rupees Eleven Crores Ten Lakhs Ninety Thousand only), of which Rs.9,66,00,000/- is the amount accepted as full and final settlement of the Arbitral awards dated: 15-1-2005 & 15-04-2006 in respect of the work relating to "Earth Work Excavation and Construction of Structures for Micro Network Distributory System of SRBC.", awarded to M/s. B.V. Subba Reddy Constructions, and the remaining being interest payable @ 9% from 12.05.2009 on which the settlement offer was first made by M/s B.V. Subba Reddy Constructions, subject to the condition that the firm shall withdraw all legal proceedings before all courts in the matter of claims arising out of "Earth Work Excavation and Construction of Structures for Micro Network Distributory System of SRBC", after realization of the amount.

7. The amount sanctioned at para (6) above shall be debitable to the following detailed Head of Account:-

“M.H.2701 – Capital Outlay on Major and Medium. 01 – Major Irrigation (commercial): MH-123 SRBC Scheme included in the plan; GH-11 NSP; SH-27 Canals and Distributaries: 530 – Major Works, 531- Other Expenditure.”

8. The Chief Engineer (P), Irrigation, Kurnool, is directed to pay the above sanctioned amount to M/s. B.V. Subba Reddy Constructions, Hyderabad and send report compliance to the Government immediately.

9. This Order issues with the concurrence of Finance (W & P) Department vide their U.O. No. 4963/F4(1)/10-1, dated:13-10-2010.

(BY ORDER AND ITS NAME OF THE GOVERNOR OF ANDHRA PRADESH)

**DR. PRASANTA MAHAPATRA
PRINCIPAL SECRETARY TO GOVERNMENT**

To

The Chief Engineer (P) Irrigation, Kurnool

Sri B.V.Subba Reddy Constructions, 5-8-51/1, Fathesultan Lane, Nampally, Hyderabad-1

The A.G.A.P., Hyd.

The S.E., SRBC Circle No.1, Nandyal

The Advocate General, High Court of A.P. Hyd.

The Director of Works Accounts, Hyd.

The Joint Director, Works Accounts, Kurnool.

The District Treasury Officer, Kurnool

The Pay and Accounts Officer, Nandyal

Copy to: The P.S. to Prl.Secy. to C.M.

The P.S. to Minister (M & MI)

The Law Dept.

The Finance (W&P) Dept. with a request to release the required LOC along with authorization for the above sanctioned amount.

The I & CAD (P &B) Dept.

The Govt. Pleader for Arbitration, High Court Building, Hyd.

SF/S.C.

//Forwarded: By Order//

Section Officer.